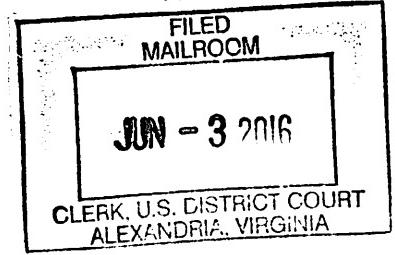


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

SWIMWAYS CORPORATION)
and)
KELSYUS LLC,)
Plaintiffs,)
v.)
BESTWAY (USA), INC.,)
Serve:)
MICHAEL J SNEED CPA PC)
Michael J. Sneed, Registered Agent)
3740 E SOUTHERN AVE #212)
MESA, AZ 85206)
Defendant.)



Civil Action No. 1:16-cv-608 LMB-IDD
JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs SwimWays Corporation (“SwimWays”) and Kelsyus LLC (“Kelsyus”), by counsel, for their Complaint against Defendant Bestway (USA), Inc. (“Bestway” or “Defendant”) allege as follows:

Parties

1. Plaintiff SwimWays is a Virginia corporation with its principal place of business at 5816 Ward Court, Virginia Beach, Virginia 23455.
2. Plaintiff Kelsyus is a Virginia limited liability company with a principal place of business at 5816 Ward Court, Virginia Beach, Virginia 23455.
3. Defendant Bestway, upon information and belief, is a corporation organized under the laws of the State of Arizona, with its principal place of business at 3249 East Harbour Drive,

Phoenix, Arizona.

Jurisdiction and Venue

4. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. §§ 1 et seq.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367, and 15 U.S.C. § 1121.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because it is a district in which Defendant is subject to personal jurisdiction.

7. This Court has personal jurisdiction over Bestway because Bestway has committed, directed, authorized, endorsed, and/or approved of acts of infringement in the Eastern District of Virginia, and caused tortious injury to SwimWays and Kelsyus in the Eastern District of Virginia, Norfolk Division; and Bestway has transacted substantial business in this judicial district.

8. For example, Bestway distributes its infringing Aqua Lounge inflatable floatation devices to, and makes it available for sale within, the Eastern District of Virginia.

Facts Applicable to All Counts

9. SwimWays is a worldwide manufacturer of innovative and commercially successful leisure and recreational water products. The SwimWays brand has been around for over 35 years, and SwimWays continues to invest substantial resources into its product design and development to create unique, quality products which are leaders in the industry. SwimWays' products can be found in thousands of major retailers and individual pool dealers, both in the United States and abroad.

10. SwimWays' products include a line of Spring Float® inflatable flotation devices. Examples of Spring Float® products are available at SwimWays' Spring Float® website, <https://www.swimways.com/spring-float-c-42.aspx>.

11. Kelsyus owns all right, title, and interest in United States Patent 7,811,145 (the “145 Patent”), which was duly and legally issued on October 12, 2010. The ’145 Patent generally relates to collapsible flotation devices. SwimWays is the exclusive licensee of the ’145 Patent. A true and accurate copy of the ’145 Patent is attached hereto as Exhibit A.

12. Kelsyus owns all right, title, and interest in United States Patent 8,066,540 (the “540 Patent”), which was duly and legally issued on November 29, 2011. The ’540 Patent generally relates to collapsible flotation devices having a back support. SwimWays is the exclusive licensee of the ’540 Patent. A true and accurate copy of the ’540 Patent is attached hereto as Exhibit B.

13. Kelsyus owns all right, title, and interest in United States Patent 8,079,888 (the “888 Patent”), which was duly and legally issued on December 20, 2011. The ’888 Patent generally relates to collapsible flotation devices having a back support. SwimWays is the exclusive licensee of the ’888 Patent. A true and accurate copy of the ’888 Patent is attached hereto as Exhibit C.

14. SwimWays has at all times marked, and continues to mark, its Spring Float® products as required by the patent marking statute, 35 U.S.C. § 287(a). For example, SwimWays’ Spring Float® products and/or packaging include the word “patent” or abbreviation “pat.” followed by the Internet address <http://patents.swimways.com/springfloat>, that lists patents applicable to the Spring Float® products. The ’145 Patent, the ’540 Patent, and the ’888 Patent, are included in SwimWays’ patent marking for the Spring Float® products.

15. Bestway manufactures, distributes, sells, offers to sell, and/or imports Aqua Lounge inflatable flotation devices throughout the United States in the stream of interstate commerce. Bestways’ Aqua Lounge inflatable flotation devices infringe claims of the ’145 Patent, the ’540

Patent, and the '888 Patent. Examples of Bestway's infringing Aqua Lounge inflatable flotation devices are reproduced below.



Examples of Infringing Bestway Products

16. Bestway's Aqua Lounge is available for purchase from Bestway through online outlets, including Amazon. Bestway also manufactures the Aqua Lounge for distribution to and resale at brick and mortar stores. For example, Bestway manufactures the Aqua Lounge for resale under the Ozark Trail brand at Wal-Mart stores, including Wal-Mart stores in the Eastern District of Virginia.

Count One **(Infringement of the '145 Patent)**

17. SwimWays and Kelsyus repeat and reallege, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

18. Bestway has infringed and continues to infringe claims of the '145 Patent, through at least its manufacturing, distribution, sale, and import of Aqua Lounge inflatable flotation devices.

19. For example, the Aqua Lounge meets every feature of claim 1 of the '145 Patent.

Bestway's Aqua Lounge inflatable flotation devices include a first flexible material with an outer perimeter portion, and a second flexible material made from nylon and/or polyester and having both an inner perimeter portion and an outer perimeter portion. The inner perimeter portion of the second flexible material is fixedly connected to the outer perimeter portion of the first flexible material in the Aqua Lounge, and the outer perimeter portion defines an inflatable chamber having a closed loop, such that the first flexible material is within the closed loop. The Aqua Lounge's second flexible material has an extended configuration when inflated, and a collapsed configuration when not inflated. The inflatable chamber maintains the Aqua Lounge in the extended configuration when inflated, and supports the weight of a user laying on the Aqua Lounge when the device is disposed in water. The first flexible material is a mesh material, such that at least a portion of the user's body is exposed to water when the user is disposed on the Aqua Lounge in water. The Aqua Lounge also includes an inflatable pillow fixedly coupled to at least one of the first flexible material or the second flexible material, and at least partially disposed within the closed loop defined by the inflatable chamber.

20. Bestway does not have license or authorization from Kelsyus or SwimWays to utilize the '145 Patent.

21. Upon information and belief, Bestway's infringement of the '145 Patent has been willful, because Bestway has known about the '145 Patent at least from SwimWays' patent marking of the Spring Float® products, and nonetheless continued to infringe.

22. Despite its knowledge of the infringement, Bestway continued to sell infringing inflatable flotation devices such as the Aqua Lounge.

23. The foregoing acts of patent infringement by Bestway have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to

SwimWays and Kelsyus, leaving SwimWays and Kelsyus with no adequate remedy at law.

Count Two
(Infringement of the '540 Patent)

24. SwimWays and Kelsyus repeat and reallege, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

25. Bestway has infringed and continues to infringe claims of the '540 Patent, through at least its manufacturing, distribution, sale, and import of Aqua Lounge inflatable flotation devices.

26. For example, the Aqua Lounge meets every feature of claim 1 of the '540 Patent. Bestway' Aqua Lounge inflatable flotation devices are configured to support a user in a seated position and include a panel with an inner portion made from a first flexible material, and an outer portion made from a second flexible material disposed about at least a portion of the inner portion of the panel. The inner portion has first and second edges on opposite sides of the inner portion, such that a distance between the first edge and the second edge defines the inner portion's width. The Aqua Lounge includes a back support member coupled to at least part of the inner portion of the panel, and a buoyant member disposed about at least a portion of the outer portion. The Aqua Lounge's buoyant member has a first portion and a second portion disposed at opposite locations of the inner portion of the panel, such that the inner portion extends continuously between the first and second portions of the buoyant member, without an intervening buoyant member. The buoyant member includes an outermost width that substantially defines an outermost width of the Aqua Lounge.

27. Bestway does not have license or authorization from Kelsyus or SwimWays to utilize the '540 Patent.

28. Upon information and belief, Bestway's infringement of the '540 Patent has been willful, because Bestway has known about the '540 Patent at least from SwimWays' patent marking

of the Spring Float® products, and nonetheless continued to infringe.

29. Despite its knowledge of the infringement, Bestway continued to sell infringing inflatable flotation devices such as the Aqua Lounge.

30. The foregoing acts of patent infringement by Bestway have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to SwimWays and Kelsyus, leaving SwimWays and Kelsyus with no adequate remedy at law.

Count Three
(Infringement of the '888 Patent)

31. SwimWays and Kelsyus repeat and reallege, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

32. Bestway has infringed and continues to infringe claims of the '888 Patent, through at least its manufacturing, distribution, sale, and import of Aqua Lounge inflatable flotation devices.

33. For example, the Aqua Lounge meets every feature of claim 15 of the '888 Patent. The Aqua Lounge has a first flexible material with an outer perimeter portion, and a second flexible material defining an inflatable chamber and an inner perimeter portion fixedly coupled to the outer perimeter portion of the first flexible material. The Aqua Lounge includes an inflatable pillow coupled to at least one of the first and second flexible materials, such that at least a portion of a perimeter portion of the inflatable pillow and the second flexible material define an interior region. The first flexible material is disposed within the interior region, and when inflated the Aqua Leisure's inflatable pillow is sufficient to support a head of a user in a supine position above the user's body when disposed in water. The Aqua Lounge also includes a valve coupled to the second flexible material, the valve configured to communicate air to the inflatable chamber of the second flexible material.

34. Bestway does not have license or authorization from Kelsyus or SwimWays to

utilize the '888 Patent.

35. Upon information and belief, Bestway's infringement of the '888 Patent has been willful, because Bestway has known about the '888 Patent at least from SwimWays' patent marking of the Spring Float® products, and nonetheless continued to infringe.

36. Despite its knowledge of the infringement, Bestway continued to sell infringing inflatable flotation devices such as the Aqua Lounge.

37. The foregoing acts of patent infringement by Bestway have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to SwimWays and Kelsyus, leaving SwimWays and Kelsyus with no adequate remedy at law.

Prayer For Relief

WHEREFORE, SwimWays and Kelsyus pray:

- (a) For a judgment that the '145 Patent, the '540 Patent, and the '888 Patent are valid and infringed by Bestway;
- (b) That this Court issue preliminary and permanent injunctive relief against Bestway, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '145 Patent, the '540 Patent, and the '888 Patent;
- (c) An accounting of damages resulting from infringement by Bestway of the '145 Patent, the '540 Patent, and the '888 Patent, together with prejudgment and post-judgment interest;
- (d) That Bestway's acts of infringement be deemed willful and intentional and that Bestway be required to pay SwimWays and Kelsyus additional damages equal to

three times the actual damages awarded to SwimWays and Kelsyus pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117(a);

- (e) That this be adjudged an exceptional case and that SwimWays and Kelsyus be awarded attorney fees, pursuant to at least 35 U.S.C. § 285; and
- (f) That this Court award SwimWays and Kelsyus their costs incurred herein; and
- (g) For such other and further relief as this Court deems just.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, SwimWays and Kelsyus demand a trial by jury on all issues so triable.

Dated: June 1, 2016

Respectfully submitted,

SWIMWAYS CORPORATION and KELSYUS LLC

By: _____

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